

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of)	Examiner: Kubelik A.R.
)	
Pal Maliga et al.)	Art Unit: 1638
)	
Serial No.: 10/737,251)	
)	
Filed: December 15, 2003)	
)	
For: "PLASTID rRNA OPERON)	
PROMOTER ELEMENTS FOR)	
CONSTRUCTION OF CHIMERIC)	
PROMOTERS FOR TRANSGENE)	
EXPRESSION")	



TRAVESAL AND REQUEST FOR RECONSIDERATION
OF REQUIREMENT FOR RESTRICTION

In the Official Action dated August 1, 2005, the Examiner indicates that the present claims are directed to forty seven (47) distinct groups of invention. These are as follows:

Groups 1-27: Claims 1-6, drawn to a Prn promoter having a sequence selected from the group consisting of SEQ ID Nos. 4-30, and vectors and plants comprising it;

Group 28: claims 7-10, drawn to a promoter of SEQ ID No. 51, and vectors and plants comprising it; and

Groups 29-47: claims 11-17, drawn to a promoter comprising a PTME operably linked to a promoter element from Table 1, and vectors and plants comprising it.

Applicants respectfully traverse the restriction requirement between these groups. Withdrawal or at the very least, modification of the requirement is clearly in order for the reasons set forth below.

It is clearly stated in 35 U.S.C. §121:

If two or more **independent and distinct** inventions are claimed in one application, the Director may require the application to be restricted to one of the invention. (*emphasis added*)

The present claims are directed to derivatives of PEP (plastid encoded RNA polymerase) promoters for use in higher plants and vectors or plants comprising the same. Applicants are frankly confounded by the Examiner's assertion that claims 1-6 are drawn to 27 different inventions. SEQ ID NOS: 4-30 are provided in Appendix I, page 38 of the specification. As the Examiner can see from the sequence alignment presented in the Appendix and in Figure 4, SEQ ID NOS: 4-30 are derivatives of a PrnPl promoter, which differ from each other at 3 nucleic acid positions which are varied in a linear fashion in each of the SEQ ID NOS: presented. Each of these sequences share conserved -10 and -35 core promoter elements and are essentially identical with the exception of the mutated triplets. A proper search of any of SEQ ID NOS: 4-30 should encompass all of these sequences due to the very high similarity and homology of the sequences. In light of the foregoing, it cannot be maintained that each of these sequences comprises a separate and distinct invention. Accordingly, the restriction requirement between these groups of invention should be withdrawn.

In order to be fully responsive to the above-mentioned requirement, Applicants hereby elect, with traverse, the subject matter of Group 28 for consideration in this application, which includes claims 7-10, drawn to a promoter of SEQ ID No. 51, and vectors and plants comprising the same.

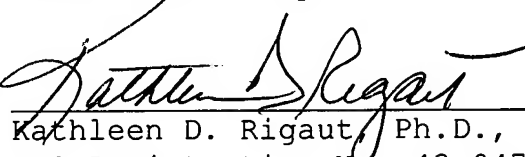
Applicants reserve the right to file one or more continuing applications, as provided in 35 U.S.C. §121, on the subject matter of any claims finally held withdrawn from consideration in this application.

Early and favorable action on the merits of this application is respectfully solicited.

Respectfully submitted,

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